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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic report due in 1994

Addendum

THE NETHERLANDS: ARUBA*

[27 March 1995]

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* The initial report submitted by the Government of the Netherlands is contained in documents CAT/C/9/Add.1 to 3; for its consideration by the Committee, see documents CAT/C/SR.46, 47, 63 and 64 and Official Records of the General Assembly, forty-fifth and forty-sixth sessions, A/45/44, paras. 435-470 and A/46/46, paras. 154-181. The second periodic report of the Netherlands (metropolitan territory) and the Netherlands Antilles are contained in document CAT/C/25/Add.1 and 2.

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* Available for consultation in the files of the Secretariat.

I. GENERAL

A. Introduction

1. Reporting obligation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. This report is submitted in pursuance of article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention became effective for the Kingdom of the Netherlands (including Aruba) on 19 January 1989. Attaining its status of autonomous entity within the Kingdom of the Netherlands in 1986 entailed for Aruba the obligation to report periodically under the various international human rights instruments.

2. The report follows as closely as possible the general guidelines as laid down by the Committee (CAT/C/4/Rev.1) and the Manual on Human Rights Reporting (United Nations publication, Sales No. E.91.XIV.1). It consists of the following parts: part I provides general information regarding Aruba, as well as the general legal framework within which the rights, as defined in articles 1 to 16 of the Convention, are implemented; part II provides more specific information relating to articles 1 to 16 of the Convention. The information given there is intended to supplement and illustrate the contents of part I.

3. Aruba's initial report under the Convention, which was submitted in 1989 (CAT/C/9/Add.1), was reviewed by the Committee against Torture during its session of March 1990. The large number of questions and comments that the Committee presented made an additional report necessary, which was therefore submitted in September 1990 and examined on 15 November 1990 (CAT/C/9/Add.3). However, the presentation of information in the present report is somewhat more extensive in order to enable the Committee to get a better understanding of the Aruban community, the Aruban legal system (including the penal system) and of the various obligations arising out of treaties.

2. General information about Aruba

4. Aruba, the most western of the Leeward group of islands, was formerly part of the Netherlands Antilles. It is situated 15 minutes by air off the coast of Venezuela and 12 degrees north of the equator. Surrounded by the Caribbean Sea, Aruba is 19.6 miles long, 6 miles wide at its widest point and has an area of 70.9 square miles.

5. Aruba is one of the few islands in the Caribbean where traits of the native Indian population are still evident. The Aruban population today is a mixture of American Indian, European and African blood. The native language is Papiamento, while in addition most Arubans speak Dutch, English and Spanish. The official language is Dutch. However, plans have existed for some time to introduce Papiamento in addition to Dutch as the language of instruction in primary schools.

6. In Aruba more than 40 nationalities have contributed to form a unique and peaceful society. The main industry is tourism. In 1991 the oil refinery resumed its operations after having been closed since 1985.

3. Aruba's present status within the Kingdom of the Netherlands

7. The present constitutional structure of the Kingdom of the Netherlands can be explained as follows. Aruba is part of the Kingdom, which consists of three autonomous partners: the Netherlands, the Netherlands Antilles and Aruba. Prior to 1 January 1986, Aruba formed part of the Netherlands Antilles, but since then it has attained its current autonomous status (Status Aparte) within the Kingdom of the Netherlands.

8. The Charter (Statuut), the highest constitutional instrument of the Kingdom, is a legal document sui generis, based upon its voluntary acceptance by the three countries. It consists of three essential parts. The first part defines the association between the three countries, which is federal in nature. The fact that together the three countries form one sovereign entity implies that a number of matters need to be administered by the countries together, through the institutions of the Kingdom. These matters are called Kingdom affairs. They are enumerated in the Charter, and include the maintenance of independence, defence, foreign relations, and proper administration.

9. The second part deals with the relationship between the countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, material or otherwise, and that they consult and coordinate in matters which are not Kingdom affairs but in which a reasonable degree of coordination is in the interests of the Kingdom as a whole. The third part of the Charter defines the autonomy of the countries, which is the principle underlying the Charter.

10. Foreign affairs (including the authority to conclude treaties with other States and/or organizations) is, in accordance with article 3 of the Charter, a Kingdom matter, being dealt with by the Council of Ministers of the Kingdom. This Council consists of the Council of Ministers of the Netherlands, supplemented with a Minister Plenipotentiary each for Aruba and the Netherlands Antilles.

11. The Charter also lays down that each of the countries is responsible for putting basic human rights and freedoms into effect, but it is the responsibility of the Kingdom as a whole to guarantee them (art. 43, chap. 1).

4. General political structure

12. The Aruban Government system is a parliamentary democracy. The head of State is the Queen of the Netherlands, represented by a Governor. The Governor is appointed by the Queen upon the recommendation of the Aruban Council of Ministers. The Council of Ministers is accountable to Parliament, which consists of one House. Members of Parliament are chosen in general elections every four years, on the basis of a multi-party system. The Governor and the Council of Ministers jointly form the Government of Aruba.

Table 1

Results of elections to Island Council (C) and Parliament (P)

Year	Number of persons with voting rights	Number of persons who actually voted	Valid votes	Invalid votes	Abstentions
1983	42 716 (C)	36 360	35 898	462	6 356
1985	43 393 (C)	37 033	36 642	391	6 360
1989	43 054 (P)	36 465	36 032	433	6 589
1993	45 680 (P)	40 240	39 867	373	5 440

Source: Registry Office.

Note: Until 1986, when Aruba still formed part of the Netherlands Antilles, elections for both the Island Council and the (Antillean) Parliament took place. Since 1986 parliamentary elections take place.

B. Land and people

1. Demographic composition

13. The development of the Aruban population during the period 1986-1993 is as follows:

Table 2

Population, annual rate of population change and of population density

Year	Population	Annual rate of population change (%)	Area (km^2)	Population density (inh./km^2)
1986	59 698	-1.61	88	318
1987	59 165	-0.89	88	315
1988	60 143	+1.65	88	320
1989	61 498	+2.25	88	327
1990	64 565	+4.99	88	343
1991	67 423	+4.43	88	359
1992	71 233	+5.65	88	379
1993	77 898	+9.36	88	414

Source: Central Bureau of Statistics, 1993.

14. In October 1991, 7,218 foreign nationals were registered in Aruba (see table 3). This represents about 10.82 per cent of the total population. A foreign national in this context means a person who does not have Dutch nationality (to illustrate, nationals from Aruba, the Netherlands Antilles and the Netherlands have Dutch nationality).

Table 3

Population by country of nationality

Country of nationality	Number	Country of nationality	Number
North America		Europe	
United States	503	Netherlands	59 469
Other North American country	40	United Kingdom	362
		Portugal	139
Central America		Other European country	161
Country in Central America	56	Asia	
		Philippines	236
South America		China	184
Colombia	1 345	Turkey	121
Venezuela	1 126	Other Asian country	95
Suriname	357	Africa	
Peru	139	Country in Africa	17
Other South American country	190	Oceania	
		Country in Oceania	2
Caribbean		Other	
Dominican Republic	1 479	No country of nationality (stateless)	3
Haiti	277		
Jamaica	164		
Grenada	104		
Other Caribbean country	118		
		Total	66 687

Source: 1991 Population and Housing Census; Central Bureau of Statistics (October 1992).

Table 4

Population by sex, at 31 December

Inhabitants				
Year	Total	Males	Females	Males per 1,000 Females
1986	59 698	29 006	30 692	945
1987	59 165	28 742	30 423	945
1988	60 143	29 217	30 926	945
1989	61 498	29 877	31 621	945
1990	64 565	31 687	32 878	945
1991	67 423	33 183	34 240	969
1992	71 233	35 174	36 059	975
1993	77 898	38 702	39 196	987

Source: Central Bureau of Statistics; March 1992.

Table 5

Migration by place of birth and sex

	1990		1991		1992		1993	
	M	F	M	F	M	F	M	F
Persons adopting Aruba as domicile								
Dutch nationals:								
born in Aruba	578	622	467	430	505	508	571	567
born in N.A.	136	96	98	92	102	80	98	74
born elsewhere	423	387	342	345	326	300	472	404
foreigners	1 310	884	1 263	1 192	1 375	1 273	2 681	2 412
Total	2 447	1 989	2 170	2 059	2 308	2 161	33 822	3 457
Departures								
Dutch nationals:								
born in Aruba	552	541	528	558	438	453	379	348
born in N.A.	61	86	69	69	53	46	51	31
born elsewhere	158	206	217	209	125	157	170	199
foreigners:	37	85	89	119	113	152	164	203
Total	808	918	903	955	729	808	764	781
Net migration	1 639	1 071	1 267	1 104	1 579	1 353	3 058	2 676

Source: Registry Office.

15. The increase in the number of inhabitants in Aruba over the period 1986-1991 was mainly the result of a substantial economic expansion. Due to a shortage of local labour, many foreigners were (and still are) recruited. Although no registration is made of the number of people of a given nationality or ethnic descent working in each economic sector, certain trends are perceptible. Most foreigners work in the construction, tourist and domestic sectors. Work in the construction sector is mostly performed by people from Venezuela, Colombia and the Dominican Republic. Regarding the tourist sector a distinction should be made between skilled and unskilled personnel. Unskilled work is mainly performed by people from Venezuela, Colombia, Peru, Chile and the Philippines, whereas most skilled work is performed by people from Aruba, the Netherlands and the United States. Work in the domestic sector is mostly performed by people from Haiti, Jamaica,

Venezuela and Colombia. A considerable number of foreign employees are not included in the Civil Register, as they have temporary working permits with their temporary residence permits.

16. In Aruba no registration is made according to race. For this reason no indication can be given of the number of coloured and/or white people belonging to a certain social class.

Table 6

Live births, deaths, birth rate and death rate.

Year	Population	Live births	Deaths	Birth Rate (0/00)	Death Rate (0/00)
1986	59 698	1 014	377	16.9	6.3
1987	59 165	992	370	16.8	6.3
1988	60 143	949	335	15.8	5.6
1989	61 498	1 141	372	18.6	6.0
1990	64 565	1 140	419	17.7	6.5
1991	67 423	1 157	429	17.2	6.4
1992	71 233	1 292	414	18.1	5.8
1993	77 898	1 337	406	17.2	5.2

Source: Central Bureau of Statistics; March 1992.

Table 7

Age distribution, 25 January 1994

Age	Total	Males	Females
0 - 4	5 539	2 965	2 574
5 - 9	5 497	2 833	2 664
10 - 14	5 227	2 653	2 574
15 - 19	4 501	2 313	2 188
20 - 24	4 413	2 244	2 168
25 - 29	5 780	2 859	2 921
30 - 34	6 753	3 349	3 404
35 - 39	6 169	2 954	3 216
40 - 44	5 103	2 476	2 627
45 - 49	4 078	1 941	2 137
50 - 54	3 586	1 699	1 887
55 - 59	3 054	1 429	1 626
60 - 64	2 126	1 013	1 113
65 and older	4 856	1 761	2 766
Total	66 687	32 821	33 866

Source: Registry Office.

Table 8

Life expectancy of the population by age and sex, 1991

Age	Male	Female
At birth	71.10	77.12
1	70.87	76.68
5	67.05	72.80
10	62.41	67.99
15	57.46	63.02
20	52.56	58.06
25	47.78	53.18
30	43.25	48.36
35	38.50	43.42
40	33.99	38.68
45	29.69	33.88
50	25.25	29.40
55	21.41	24.61
60	17.43	20.43
65	13.73	16.60
70	10.41	12.24
75	7.98	8.91
80	6.03	5.99
85	4.56	2.63

Source: Population Census - 6 October 1991 - and Registry Office.

Table 9

Average age of the population at 31 December

	1987	1989	1991	1993
Total	32.4	32.7	33.2	33.0
Males	31.5	32.0	32.5	32.3
Females	33.2	33.3	33.9	33.7

Source: Population Register.

2. Housing

Table 10

Households and population in households, by type of dwelling

	Number		Percentage	
	Households	Population	Households	Population
Housing units				
House	16 708	60 334	86.7	90.5
Appartment/room	1 830	3 821	9.5	5.7
Trailer/container	156	405	0.8	0.6
Cuarto (single room)	497	1 159	2.6	1.7
Other	20	67	0.1	0.1
Not reported	14	23	0.1	0.0
All housing units	19 224	65 807	99.7	98.7
Collective dwellings				
Home for the elderly	3	222	0.0	0.3
Orphanage	2	67	0.0	0.1
Nursing home	3	46	0.0	0.1
Collective living quarters for employees	9	280	0.0	0.4
Prison	1	201	0.0	0.3
Other	1	33	0.0	0.0
Not reported	-	-	-	-
All collective dwellings	20	848	0.1	1.3
Homeless				
Households/population	32	32	0.2	0.0
Total households/population	19 276	66 687	100.0	100.0

Source: Population and Housing Census, October 1991.

3. Religion

Table 11

Religion, by sex

	Male	Female
Roman Catholic	28 420	29 032
Methodist	502	591
Anglican	163	280
Protestant	880	915
Adventist	163	253
Evangelist	557	764
Jehovah's Witness	393	500
Muslim	160	58
Jewish	77	77
Other	473	540
No religion	991	818
Not reported	41	37
Total	32 821	33 866

Source: Population and Housing Census, October 1991.

C. Economy and labour

1. Economic system

17. Aruba has an open economy which, because of its small scale, is dependent on imports from abroad and export trade. Since most goods are imported, it is necessary, in order to maintain a proper balance of trade, to expand Aruba's export market beyond the natural resources available.

18. Furthermore, Aruba is characterized by the absence of commercially exploitable mineral resources; labour costs which are among the highest in the region; limited fresh water resources; soil salination; a dry climate and a strong trade wind. In addition, the sea surrounding Aruba does not provide for extensive fishing. Consequently, the development of manufacturing and agricultural sectors has been hindered.

2. Economic background

19. Until March 1985, the mainstay of the Aruban economy was the large EXXON oil refinery (Lago) in San Nicolas, which accounted for one third of government revenues and almost 50 per cent of foreign exchange earnings. Tourism was a second source of income, the development of which had been encouraged by an active Government policy since the late 1950s. The closure of the refinery in 1985 together with a sharp decline in oil prices, which led to a massive devaluation of the Venezuelan bolivar and halted Venezuelan

tourism to Aruba, almost completely, dealt a heavy blow to the economy, causing a decline in Gross Domestic Product (GDP) of nearly 18 per cent in real terms, up to 20 per cent unemployment, a sharp swing to deficit on the current account of the balance of payments and a considerable deterioration of the public finances.

20. In response, the Government adopted an adjustment programme with the financial support of the Government of the Netherlands and the technical assistance of the International Monetary Fund. This programme focused on efforts to expand the tourist sector as the new engine of growth, a number of tax measures and a substantial cut in wages to contain financial disequilibrium in the fiscal and external accounts. The expansion of the tourist sector entailed governmental support in a number of areas. Of particular importance, however, was the guarantee programme by which the Government issued guarantees to the institutions financing the hotel projects.

21. These government measures led to an investment boom in tourism and related services. This resulted in a boost to economic growth and Aruba's GDP increased significantly over the period ending in 1990. Reflecting the strength of economic activity some 10,000 new jobs have been created in the past few years, virtually erasing unemployment. Furthermore, the number of tourists visiting Aruba has increased sharply, as shown in table 12. Coupled with the inflow of foreign investment capital, international reserves increased and reached Af. 267 million at the end of 1990. The reserve position remained stable at about 3.5 months of imports, which is viewed internationally as an adequate ratio. In addition, the Government's public finances improved significantly.

Table 12

Tourism statistics

Years	Tourist bookings per night	Tourist arrivals	Revenues (Af. mill.)	Avg. exp. (US$)
1985	1 362 954	206 755	226.5	612.00
1986	1 290 836	181 211	283.0	872.50
1987	1 628 364	231 582	390.8	942.00
1988	2 079 597	277 973	483.7	972.00
1989	2 657 172	344 336	548.4	890.00
1990	3 379 993	432 762	625.6	807.00
1991	3 768 334	501 324	695.3	775.00
1992	3 902 293	541 714	-	-
1993	4 027 754	562 034	-	-

Source: Aruban Investment Bank, 1992.

Table 13

Employees by age and sex, 1991

Age	Total	Male	Female
14-19	746	397	349
20-24	3 027	1 611	1 416
25-29	4 558	2 454	2 104
30-34	5 316	2 949	2 367
35-39	4 721	2 614	2 107
40-44	3 779	2 205	1 575
45-49	2 781	1 700	1 081
50-54	2 069	1 319	750
55-59	1 248	877	371
60-64	501	372	129
65+	386	294	92
Not rep.	86	42	45
TOTAL	29 220	16 834	12 385

Source: Population and Housing Census, 1991.

Table 14

Gross Domestic Product (Af. mill.)

	1990	1991	1992
GDP (current prices)	1 628.3	1 808.6	2 023.1
GDP annual growth (%)	15.9	11.1	11.9
GDP (constant prices)	1 359.2	1 437.7	1 531.5
GDP annual growth (%)	9.3	5.8	6.5

Source: Department of Economic Affairs, Commerce and Industry, estimates.

Table 15

Employment by sector

	1990 (Sept.)	1991 (Oct.)
Agriculture, fisher and mining	58	180
Manufacturing	680	1 717
Construction	4 382	2 975
Hotels, retail trade, restaurants and bars	10 623	10 604
Transport, storage and communication	1 740	2 276
Real estate, financing and business services	1 927	2 371
Government	3 550	4 241
Other	3 410	9 097*
Total employed	26 370	33 461

Source: Department of Labour and Central Bureau of Statistics.

* Of which 8,455 persons work for Community, Social and Personal Services.

Table 16

Unemployment rate

	1990	1991	1992
Unemployment rate	1.3	0.6	0.6

Source: Department of Labour.

D. Penal and penitentiary system

1. General

22. Formally speaking, Aruban criminal law and the law relating to detention meet the requirements set in international human rights conventions. Aruba's Constitution, which is progressive and of recent date, includes the required safeguards for inhabitants of Aruba as well as for persons (whether criminals or not) who are on Aruba temporarily, as prescribed by international human rights conventions. But as the regulations in the realm of criminal law (1913), law of criminal procedure (1914) and detention (1930) are outdated, they do not always come up to the standards that Aruba itself has imposed in the Constitution. The Government is aware of this, and is implementing the desired changes in various areas.

2. Constitution of Aruba

23. Aruba seized the occasion of its acquiring autonomous status (Status Aparte), in 1986, to introduce a constitution of its own, based on the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the European Social Charter, the Constitution of the Netherlands and the Constitution of the Netherlands Antilles. Some of the provisions of the European Convention, in particular - the principle of equality, the principle of nulla poena sine lege, the presumption of innocence and the proscription of the death penalty - have been incorporated almost verbatim into the Constitution of Aruba. Article I.5 contains provisions concerning lawful arrests, deprivation of liberty and imprisonment. This article, which the Explanatory Memorandum refers to as having been carefully harmonized with article 5 of the European Convention, and also with the case law generated by this provision, refers to all cases of deprivation of liberty. Also included are the right to legal assistance and aid (art. I.7) and provisions relating to the legal system and the independent judiciary (chap. VI).

3. Criminal law

24. Article I.6 of the Constitution contains the principle of nulla poena sine lege: "No offence shall be punishable unless it was an offence under the law at the time it was committed". This formulation indicates that the provisions of criminal law may also be based on a piece of substantive legislation such as a country decree, containing general measures and decisions of public law bodies competent to promulgate regulations, provided that such regulations are based on acts of Parliament.

25. As the present Code of Criminal Procedure dates from 1914, work has been in progress for some time on preparing a new Code of Criminal Procedure for the Netherlands Antilles and Aruba. The first draft was presented to the Government in 1987, and it has since been debated in the Parliaments of both the Netherlands Antilles and Aruba. The protracted passage of this bill has generated a long series of amendments. One thing that complicates the drafting of a new Code of Criminal Procedure is the fact that it is what is known as a uniform Country Ordinance. Because the Netherlands Antilles and Aruba share a Joint Court of Justice, their legislation in areas such as criminal procedure must be identical, which makes the passage through the two parliamentary assemblies more circuitous, to say the least.

26. Although the present Criminal Code has been amended and supplemented on countless occasions over the years, it contains several outdated provisions. Forced labour, putting prisoners on "a diet of bread and water, corn meal or rice" and the scope for a court to impose a stricter prison regime (i.e. as a way of increasing the sentence, not as an internal disciplinary measure) are practices that, although abandoned years ago, are all still possible according to this Criminal Code. The death sentence was abolished for Aruba on the basis of article 29 of the Country Ordinance on exceptional transitional provisions, (AB 1987, No. GT 3).

27. Although physical inviolability is safeguarded by the Constitution, the Criminal Code does not explicitly prohibit torture. Implementing legislation is currently under preparation to correct this omission.

4. The law relating to detention

28. The law relating to detention violates the fundamental rights, guaranteed by the Constitution, to personal liberty and security, and the right to freedom of movement within Aruba, as well as the right to stay there and choose a place to live. The legitimacy of this violation likewise derives from the Constitution, which provides, inter alia, that the Government must be able to punish those who offend against the law, as well as being able to protect society from certain individuals and certain individuals from themselves.

29. On the basis of the Aruban Constitution, in the event of a person's being deprived of his liberty, it is essential to adhere to the procedural rules that have been imposed or authorized by Parliament. Powers to deprive individuals of their liberty must be laid down by law. Furthermore, a person may only be deprived of his liberty in the cases listed exhaustively in article I.5 of the Constitution, i.e. in cases of:

(a) Lawful detention after conviction by a competent court;

(b) Lawful arrest or detention for non-compliance with the lawful order of a court or to secure the fulfilment of any express obligation prescribed by law;

(c) Lawful arrest or detention of a person effected for the purposes of bringing him before the competent legal authority when there are reasonable grounds for suspecting that he has committed an offence, or when there are reasonable grounds for considering it necessary to prevent him:

(i) Committing an offence;

(ii) Fleeing after having committed an offence;

(iii) Jeopardizing a criminal investigation;

(d) Lawful detention of a minor for the purpose of intervening in his upbringing, or his lawful detention for the purpose of bringing him before the competent authority;

(e) Lawful detention of persons to prevent the spreading of an infectious disease, of persons of unsound mind, alcoholics or drug addicts (pursuant inter alia to the Mental Health Ordinance (AB 1992, No. GT 15));

(f) Lawful detention of persons to prevent their effecting an unauthorized entry into the country or of persons against whom expulsion or extradition proceedings are pending (elaborated in the Country Ordinance on admittance and deportation (AB 1993, No. GT 33)).

30. Aruba's prison legislation consists of a Prisons Ordinance (PB 1930, No. 73), the Country Decree on prisons (PB 1958, No. 18) and the Instructions for prison officers (PB 1958, No. 19). The latter regulations are based on article 26 of Aruba's Criminal Code. These regulations, together with Titles II and III of Book I of the Criminal Code, comprise the body of legislation relating to persons who have been confined to a remand centre or prison on the basis of a criminal investigation that is being conducted against them or of a term of imprisonment to which they have been sentenced.

31. The content of these regulations is outdated, however, and no longer tallies either with modern views on detention or with current practice. The preparation of a new Country Ordinance on deprivation of liberty is therefore under way. Until this Country Ordinance is promulgated and enters into effect, an undesirable situation will continue to exist, as the following examples clearly show. For instance, the Prisons Ordinance provides for the institution of the pistole - a separate room in a remand centre with "different meals and beds" in which detainees who have not been convicted may stay at their own expense instead of having to stay in a cell. No use is made of this provision in practice. Another of the ordinance's unused provisions is the disciplinary measure of casting a prisoner into chains, whether or not in a punishment cell, and providing him with "... dry food only, every other day ...", which is in violation, for instance, of article 10 of the International Covenant on Civil and Political Rights. It is also theoretically admissible to divide detainees into various "classes" on the basis of non-objective criteria, though this is in fact never done.

32. Detainees are separated on objective grounds (i.e. sex, age, whether sentenced or in pre-trial detention, whether or not exhibiting psychotic behaviour). It may be added that like the Criminal Code, the Prisons Ordinance and the Instructions for prison officers also contain no explicit ban on torture by staff, although there is a provision instructing staff to "treat prisoners with respect, but without familiarity" (art. 13, Instructions for prison officers).

33. According to the Government's present views concerning detention, a custodial sentence is imposed not only as a form of retribution, but also with a view to resocializing the person sentenced and as a general crime prevention measure. While it is true that the nature of this type of punishment constitutes a violation of other constitutional rights, the prison regime is not made harsher with the imposition of extra rules and prohibitions.

E. Education

34. The Aruban education system is largely modelled on the Dutch system, and may be divided into the following levels and types:

(a) Pre-school playgroups for children aged 0-3 years;

(b) Nursery education for children aged 4-5 years;

(c) Primary education for children aged 6-11 years;

(d) Special primary education, divided into:

(i) Education for children with learning difficulties;

(ii) Education for children with severe learning difficulties;

(e) Secondary education for children aged 12 to ± 17, divided into:

(i) Junior technical education (LTS);

(ii) Junior secondary home economics education (LHNO) and the follow-up courses taught at the Paso Sigur school (PSS);

(iii) Economic, tourist and administrative education (ETAO);

(iv) Junior general secondary education (MAVO);

(v) Senior general secondary education (HAVO);

(vi) Pre-university education (VWO);

(f) Post-secondary education (MBO, HBO, WO) for children of ±15-18 years and older, divided into:

(i) Senior secondary technical education (MTO);

(ii) Senior secondary administrative education (MAO);

(iii) Hotel management (Aruba Hotel School);

(iv) Teacher training courses (Instituto Pedagogico Arubano);

(v) The University of Aruba (UA), Law Faculty and Financial Economic Faculty;

(g) Adult education for school-leavers in the 15+ age range.

Table 17

Estimated number of pupils and students in Aruba

Age	Educational level	1981	1991
4-5	Nursery	86.0%	approx. 90%
6-11	Primary	99.4%	> 99%
12-17	Secondary	87.2%	approx. 95%
18-21	Post-secondary	25.5%	approx. 30%

Source: Education Statistics Section, Education Department.

35. Although preparations are in hand to rectify the situation (partly because of the obligations under article 14 of the International Covenant on Economic, Social and Cultural Rights), Aruba does not yet have compulsory primary education. School attendance is therefore voluntary, and in this light the high percentages are all the more encouraging. Table 18 shows the number of pupils in various levels and types of education in the 1991/92 school year, by sex.

Table 18

Participation in education, by sex

Educational level	No. of schools (1/9/91)	No. of pupils		
		M	F	T
Nursery	23	1 057	971	2 028
Primary	28	3 463	3 500	696
Special primary	3	157	71	228
Junior technical	3	858	10	868
Junior secondary home economics	4	87	285	372
Economic, tourist and administrative	4	159	382	545
Junior general secondary	9	820	1 164	1 984
Senior general secondary/pre-university	1	456	684	1 106
Senior secondary technical	1	238	25	263
Senior secondary administrative	1	56	139	195
Total	7 773	5 172	3 214	583

Source: Education Statistics Section, Education Department.

36. Children in Aruba have always grown up in a multicultural and multiracial society. Since there has not been any need to pay particular attention in the schools to the problems that might be posed by such a society, the Aruban Government has not adopted a special policy in this matter. However, attention is paid in social studies to issues of discrimination.

37. For some time there have been calls to make radical changes to the Aruban education system. The percentage of pupils kept back for a year is fairly high and is largely due to the language problems which occur. Although Dutch is the official language of instruction, the great majority of the Aruban population normally speak Papiamento.

38. Furthermore, since around 1985 many foreigners have emigrated to Aruba, in some cases with their families. As parents are free to choose the school which they wish their children to attend, most foreign children attend local schools where the Dutch school system is used. Although the influx of these children does not pose problems of (racial) integration, the fact that Dutch is the official language does, however, pose problems for the children in particular and the school system in general. Since 1989 the Aruban Government has been organizing Dutch language courses for young people which are very well attended. In addition, individual schools have organized Dutch courses for non-Dutch pupils who have come to Aruba with their parents from various countries.

39. Compared with the Netherlands and the Netherlands Antilles, the percentage of successful pupils per school is reasonable. Nevertheless, these percentages have been falling in recent years. The causes and possible solutions are being debated in the various schools concerned and with the relevant authorities.

F. General legal framework within which human rights are protected

1. General

40. The main frame of reference for basic human rights (including civil and political rights) in Aruba is the Constitution (Staatsregeling), chapter I of which, and to some extent the other chapters, enshrine the most important basic human rights.

41. In addition, since Aruba attained its current Status Aparte in 1986, the relationship between the Netherlands Antilles and Aruba is covered by the Cooperation Agreement (Samenwerkingsregeling), article 3 of which directs the countries to incorporate human rights, as laid down in the European Convention on Human Rights of 4 November 1950, into their legislation.

42. Although, torture for example, is not dealt with as such in Aruban legislation, the Aruban Criminal Code contains provisions that cover this serious crime, as well as other crimes such as incitement to racial hatred, instigating the publication of discriminatory material, etc.

2. Obligations arising from other international instruments

43. In addition to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Aruba is a party to the following instruments containing provisions regarding human rights:

(a) International Covenant on Civil and Political Rights;

(b) Optional Protocol to the International Covenant on Civil and Political Rights;

(c) International Covenant on Economic, Social and Cultural Rights;

(d) International Convention on the Elimination of All Forms of Racial Discrimination;

(e) Convention on the Elimination of All Forms of Discrimination against Women;

(f) European Convention for the Protection of Human Rights and Fundamental Freedoms;

(g) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(h) European Social Charter.

Furthermore the Convention on the Rights of the Child was approved by the Aruban Government.

G. Information and publicity

44. In connection with the various human rights reports that Aruba is obliged to draw up at periodic intervals, it was necessary to devise a suitable structure for the procurement of the requisite information from government bodies. To this end, an Aruban human rights committee was appointed in 1991, its members drawn from 17 government bodies and NGOs, which together provide the material for the reports.

45. This had two beneficial effects: firstly, it designated certain persons as permanent liaison officers, and secondly, it had a consciousness-raising effect concerning the existence and importance of human rights within the government bodies involved.

46. By decision of the Council of Ministers of 29 September 1993, the human rights committee was given a formal basis and has the following tasks:

(a) To be an advisory organ to the government regarding human rights issues;

(b) To comply with the reporting obligations, in pursuance of the international human rights conventions;

(c) To promote the general awareness among the public regarding human rights.

47. Within the context of the Kingdom, close ties were built up for cooperation in the area of human rights, leading inter alia to the holding of two workshops, each of which took certain specific conventions as its theme. A third workshop of this kind is planned to take place in the near future.

48. Informing the population concerning human rights is one of the tasks that the human rights committee has taken upon itself. In addition to the publication of booklets on the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, a start was made in November 1992 on a series of articles in local newspapers about human rights and their importance for the individual member of the public. These articles, too, are thematically oriented, each dealing with a specific convention or an aspect of it. In collaboration with, amongst others, the Aruba division of Amnesty International and organizations active in the field of the rights of children, a variety of schools (both elementary and secondary) and institutions are visited and receive information on human rights in general or on specific human rights issues.

II. DETAILED INFORMATION REGARDING SPECIFIC PROVISIONS OF THE CONVENTION

Articles 2 and 4 - Torture as a criminal offence

49. The right of every person to the inviolability of his body, subject to restrictions laid down by or pursuant to country ordinances, is enshrined in article I.3 of the Aruban Constitution (AB 1987, No. GT 1). This provision is elaborated in various country ordinances.

50. While it is true that Aruban legislation has not yet dealt with the concept of "torture", Aruba's Criminal Code does define "assault" as a criminal offence, in articles 313 to 318 inclusive (AB 1991, No. GT 50). The provisions referred to below are all from the Criminal Code of Aruba. The penalties that may be imposed are laid down by the articles to which reference is made. Causing grievous bodily harm (pursuant to art. 84 of the Criminal Code this includes psychological harm) and the death of the victim as a result of the assault or ill-treatment, are defined as aggravating circumstances. The penalties for grievous bodily harm are laid down in the second paragraph of articles 313 to 314b, and in the first paragraph of articles 315 and 316. The third paragraph of articles 313 to 314b and the second paragraph of articles 315 and 316 impose the maximum sentence in cases in which "the offence results in death".

51. The penalty imposed on a public servant who commits an offence while carrying out his duties (either by failing to fulfil a special legal obligation or by making use of powers, opportunities or means deriving from his office for the purpose of committing an offence) may be increased by one third (art. 46). The maximum term of imprisonment that may be imposed on Aruba is life (art. 11); article I.4 expressly states that the death sentence may not be imposed, and the death sentence is indeed no longer included in Aruba's Criminal Code. Another point worth mentioning is the fact that the maximum sentences referred to below apply not only to the perpetrator of the ill-treatment, but also to any person who orders the ill-treatment, who is an accessory, or who intentionally solicits it (art. 49).

52. Application of the above provisions leads to the following maximum sentences. For grievous bodily harm committed by an official during the exercise of his duties, the maximum sentence that can be imposed is 16 years' imprisonment (art. 316, para. 1 in conjunction with art. 46). If the victim dies as a result of the wounds inflicted, the maximum sentence is 20 years' imprisonment (art. 316, para. 2 in conjunction with art. 46). The legislation to implement the Convention, which is currently under preparation, will deal expressly with torture as defined in the Convention, and will be in line with these existing provisions.

53. Article 2, paragraph 3, of the Convention stipulates that an order from a superior officer or a public authority may not be invoked as a justification of torture. Articles 44 and 45 of Aruba's Criminal Code contain specific provisions relating to compliance with statutory provisions or orders given in the line of duty. Pursuant to these articles, any person who commits an offence in the course of implementing a statutory provision or an order given in the line of duty by the competent authority is not liable to prosecution.

For an official to invoke this provision, it is required either that the order in question was issued by a person or body competent to do so, or that the official believed in good faith that this was the case. In order to establish beyond all doubt that an order to inflict torture, given in the line of duty, does not constitute grounds for immunity from criminal prosecution, the implementing legislation currently under preparation in relation to torture as defined in the Convention states explicitly that an official order cannot constitute such grounds. This makes it impossible for any dispute to arise concerning the question of whether an official can evade criminal liability by claiming that one of his superiors ordered him to perpetrate an act of torture. It may be added that the legislation implementing the Convention will also expressly exclude the possibility of anyone who stands accused of torture invoking "compliance with a statutory provision" as grounds for immunity from criminal liability.

54. To date no cases have arisen in practice that may be considered under the heading of torture, as defined in the Convention that is under discussion here. The case law does, however, include cases of police officers who, in the course of carrying out their duties, have committed inadmissible acts that could be classified as ill-treatment. It has not been demonstrated, however, that these acts were committed with the aim of obtaining information or a confession, etc. In most cases the aim was to bring the person concerned into line or to defuse a troublesome situation. Inasmuch as such acts went beyond what was acceptable, these matters were dealt with as normal criminal cases in which the fact of someone being a police officer was an aggravating circumstance.

Article 3 - Non-refoulement

55. Policy on admitting aliens is characterized by a restrictive application of the scope afforded by the Country Ordinance on admittance and deportation (AB 1993, No. GT 33). A major point of importance here is the small size of the island; a country of this size cannot allow unlimited numbers of people to settle and work there. This would have too great an impact on the available infrastructure, creating undesirable situations. Having regard to this limited capacity for absorption, persons are admitted to the island only where their presence serves an essential Aruban interest or where there are compelling reasons of a humanitarian nature.

56. Anyone wishing to stay in Aruba must possess a valid residence permit. Persons found to be on the island without any such permit may be expelled pursuant to article 19 of the Country Ordinance on admittance and deportation by the Minister of Justice. The person concerned may lodge an appeal with the Governor against a decision by the Minister of Justice. The procurator general submits recommendations concerning any appeal that is lodged, and the Advisory Council is also heard before a decision is reached on the appeal in the form of a Country Decree. The Country Ordinance on administrative procedure (AB 1993, No. 45) will replace the existing appeal arrangements with an objections and appeals procedure before the administrative body concerned or the court of first instance, whichever is applicable.

57. In accordance with article 2 of the Charter of the Kingdom of the Netherlands and the Country Ordinance on admittance and deportation, applications for asylum submitted in Aruba by persons wishing to stay on Aruba are dealt with by the Aruban authorities. Applications for asylum submitted in Aruba by persons wishing to stay in the Netherlands are dealt with by the Dutch diplomatic mission. As from 1 January 1986, the Protocol relating to the status of refugees, (New York, 1967) entered into effect for Aruba. Both in the Convention relating to the Status of Refugees (Geneva 1951) and the Protocol, the concept of refugee is limited to persons who have a well-founded fear of persecution. States retain the right to determine who falls within the scope of this definition. If someone is classified as a refugee, States parties to the Protocol may not proceed to refoulement, or the expulsion or return of the individual concerned.

58. Aruba has no statutory procedure for dealing with applications for asylum, which means that each application has to be dealt with on an ad hoc basis. The reason for this is that scarcely any applications for political asylum have been received to date. Since 1991, a total of five persons have applied to the authorities for asylum. Although the persons concerned in these cases were not granted asylum, there was also no application of refoulement. In 1991, two persons submitted applications for political asylum. These applications were rejected, but the persons concerned found jobs and obtained residence and work permits. No asylum applications are recorded for 1992. In 1993, there were three applications for asylum. In two cases, the Office of the United Nations High Commissioner for Refugees was contacted, as the persons concerned already enjoyed the protection of this organization, while in another case the person concerned stated during the processing of his application that he preferred to return to his country of birth (not the country of origin).

59. Although there are as yet no official procedures for the processing of asylum applications, the authorities concerned cooperate as much as possible in order to discover whether there is a "well-founded fear" (this fear must be backed up by the factual circumstances) and in order to grant the person concerned adequate protection. At the same time, consultations are held with the Ministry of Foreign Affairs in The Hague, the Kingdom's diplomatic missions in other countries and the international organizations concerned. The final decision on an application for asylum lies with the Minister of Justice.

60. A committee was set up by Ministerial Order of 2 September 1993 to review legislation relating to aliens. The committee has since issued its final report, in which it makes several recommendations to the Government, advising it, inter alia, to include the principle of non-refoulement, which provides legal protection to aliens, in the new Country Ordinance on admittance and deportation that is currently under preparation.

Article 5 - Determination of jurisdiction

61. Articles 2-8 of Aruba's Criminal Code regulate jurisdiction. Articles 2, 3 and 8 are significant in relation to the Convention against Torture; pursuant to these provisions, Aruban criminal law is applicable to anyone found guilty of that offence within the territory of Aruba, or outside

Aruba on board an Aruban ship or aircraft, unless any provision of international law excludes such jurisdiction. Aruban legislation thus complies with the requirement laid down in article 5, paragraph 1(a), of the Convention.

62. On the other hand, current legislation does not grant jurisdiction in the cases defined in article 5, paragraphs 1(b), 1(c) and 2, of the Convention. The only relevant provision here is article 5, paragraph 2, of the Aruban Criminal Code, which provides that Aruban criminal law shall also be applicable to a resident of Aruba who commits an act outside Aruba that is defined as an offence under Aruban criminal law, provided that the law of the country where the offence was committed has also defined the act in question as a criminal offence. Given that ill-treatment is a criminal offence within Aruba (see arts. 2 and 4), a resident of Aruba may be prosecuted for ill-treatment in a country that has also defined ill-treatment as a criminal offence. If the latter condition is not fulfilled, Aruban criminal law is not applicable, and the person concerned cannot be prosecuted for ill-treatment in Aruba.

63. In order to comply with the obligations concerning the establishment of jurisdiction, as formulated in article 5 of the Convention, the implementing legislation currently being drafted will establish universal jurisdiction for Aruba in respect of torture as defined by the Convention.

Article 6 - Criminal proceedings

64. When a person is suspected of having committed a criminal offence (including ill-treatment and the physical acts that can be brought under the heading of the concept of "torture" in the Convention) a number of coercive measures may be employed against him that may, for instance, impose restrictions on his liberty. The Code of Criminal Procedure includes an exhaustive list of these coercive measures. For the application of such measures, however, there must always be a suspicion that a criminal offence has been committed. The criminal investigation set up when such a suspicion exists is generally instituted for the purposes of finding a suspect. The term "suspect" is defined in article 50 of the Code of Criminal Procedure: "A suspect is defined as someone in respect of whom a reasonable suspicion exists, on the basis of facts or circumstances, that the person concerned has committed a criminal offence". A suspect is presumed to be innocent until his guilt has been established in legal proceedings (praesumptio innocentiae).

65. Deprivation of liberty begins with the arrest of the suspect. The public prosecutor plays the central role here. Pursuant to article 34, paragraph 1, of the Code of Criminal Procedure, he is authorized to order the arrest of any person suspected of a criminal offence for which a term of imprisonment may be imposed, and he may conduct such an arrest himself. If he cannot be contacted, if a suspect is caught in flagrante delicto or if a case is of such an urgent nature that it is impossible to await the decision of the public prosecutor, under article 34, paragraphs 2 and 3, of the Code of Criminal Procedure the authorization passes to any available assistant public prosecutor, and if it is likewise impossible to await the actions of the latter, it passes to any other investigating officer. Immediately upon arrest, the suspect is informed of his right/authorization to be advised by

legal counsel and of the nature of the criminal offence of which he is suspected. He is also informed that he is not obliged to answer any questions.

66. The suspect's legal counsel has free access to a client who has been deprived of his liberty, may speak to him alone and correspond with him, without the content of such letters being known to others; however, this must all take place under the prescribed supervision, with due regard to the prison rules and without impeding the investigation (art. 50 sexies, Code of Criminal Procedure). In highly exceptional cases, namely where a strong suspicion exists, on the basis of certain circumstances, that free association between lawyer and suspect will have the effect of acquainting the suspect with some circumstance of which it is judged to be in the best interests of the criminal investigation for him to remain ignorant for the time being, or that such free association is being used in an attempt to prevent the truth coming to light, the public prosecutor may order that the lawyer shall not be given access to the suspect or be allowed to speak to him alone, and that the letters or other documents that pass between the lawyer and the suspect shall not be passed on. This order must however immediately be submitted for approval to the Court of Justice.

67. The procedure to be followed after arrest is geared towards ensuring that the individual detained is brought before a public prosecutor or assistant public prosecutor as soon as possible. The latter ascertains whether the right person has been apprehended, whether the arrest was lawful and whether continued deprivation of liberty is necessary (art. 38, Code of Criminal Procedure). If he deems the arrest unlawful or unjustified, he is obliged to release the suspect.

68. If he does not reach this decision, he may decide to deprive the suspect of his liberty in order to question him about the alleged offence. This is referred to as detention for questioning (art. 41, Code of Criminal Procedure). This interview may not last more than six hours (art. 41, para. 2). The time between 2200 hours and 0800 hours may not be used for the purposes of questioning unless the suspect has no objection to this. When the interview is over, and if it is not considered necessary to continue to deprive the individual concerned of his liberty, he must be released immediately.

69. On the other hand, if it appears desirable to continue to deprive the suspect of his liberty, and if he is suspected of an offence in respect of which imprisonment has been declared admissible, he may be placed in police custody (art. 38, para. 1 and art. 39, Code of Criminal Procedure). When an assistant public prosecutor has placed a suspect in police custody, he must inform the public prosecutor within 24 hours (art. 38, para. 3). The detention in police custody may not last more than four days (art. 39, Code of Criminal Procedure). If the interests of the investigation make it necessary for the person concerned to be deprived of his liberty for a longer period of time, the public prosecutor is authorized to prolong the period of police custody by a maximum of six days, but only if there is an urgent need to do

so. He should, however, hear the suspect first, who will be brought before him and may submit his objections to the continuation. The public prosecutor should satisfy himself that the continued deprivation of the suspect's liberty is indeed essential.

70. It is current practice, on the second day of a suspect's remand in police custody, for him to be brought before the public prosecutor, who in turn ensures that the suspect is brought before the examining magistrate within the following three days. It is up to the examining magistrate to ascertain whether the suspect has been lawfully remanded in police custody. If he considers the measure to have been unlawful, he orders the suspect's immediate release. Suspects remanded in police custody are held in isolation cells at the police station in Oranjestad or San Nicolaas.

71. After 10 days of remand in police custody, the sole person authorized to decide on the need for and admissibility of any further deprivation of liberty is the examining magistrate. Following an application by the public prosecutor, he may grant an order for pre-trial detention, which will state where the suspect is to be detained (art. 67, para. 1, Code of Criminal Procedure). In practice, orders for pre-trial detention are regularly implemented in isolation cells at police stations, because of a lack of space at Aruba's Penitentiary (KIA). Recently, however, a policy decision has been made to the effect that deprivation of liberty on the basis of an order for pre-trial detention will always be implemented in the KIA, where detainees have more privileges than at police stations.

72. An order for pre-trial detention is valid for eight days and may be extended for a further eight days following application by the public prosecutor (art. 67, para. 3 of the Code of Criminal Procedure). Pursuant to article 67, paragraph 1, the cases in which, and the grounds on which, a court or examining magistrate may grant an order for pre-trial detention are the same as those given below in respect of extended pre-trial detention; they are given in article 76 of the Code of Criminal Procedure.

73. If an application for an order for pre-trial detention is denied, the suspect must be released when his period of police custody has expired. If the examining magistrate establishes that a suspect was unlawfully held in police custody, the suspect must be released immediately.

74. If the public prosecutor believes that there are grounds on which to continue to deprive the suspect of his liberty after the period of pre-trial detention, he must submit an application to the court of first instance consisting of the following three parts:

1. An application for right of access (art. 71, para. 1, Code of Criminal Procedure).

2. An application for the referral of the case for trial or the ordering of a preliminary investigation of the case (art. 71, para. 2, Code of Criminal Procedure).

3. An application for an order for extended pre-trial detention (art. 71, para. 2, Code of Criminal Procedure).

75. Extended pre-trial detention may be ordered by the court if the alleged offence is punishable by a term of imprisonment of four years or more, or if the alleged offence is specifically referred to in the Criminal Code (art. 76) as an offence for which extended pre-trial detention may be imposed. An order for extended pre-trial detention remains in force for eight weeks (art. 104, para. 1, Code of Criminal Procedure) and may be extended for eight weeks at a time until the trial, each time following an application by the public prosecutor.

76. When the trial has begun, the order for extended pre-trial detention remains in force until the court has decided on the matter. Proceedings are held in public. Giving judgement, the court orders the accused person's release if he is acquitted, if the case made by the public prosecutions department is found to be inadmissible or if the court considers that the case lies outside its field of competence. The court may also order a person's release if he is convicted of an offence for which pre-trial detention is inadmissible. When ordering the individual's release, he may stipulate that this be immediately enforceable, but alternatively he may decide that the person will continue to be deprived of his liberty until the public prosecutions department has waived its right of appeal, or until the expiry of the period during which an appeal may be lodged, or until the judgement has become irrevocable after a ruling handed down on appeal.

Articles 7 and 8 - Extradition

General

77. With the growth in international crime, and the development of modern communications technology, requests from one State to another for the extradition of a person who is within the territory of the latter State are increasing in frequency. In order to provide a legal foundation for such applications, States increasingly conclude agreements concerning the extradition of persons who have offended against the law. Aruba too has received an increasing number of such requests from neighbouring countries during the last few years.

Statutory framework

78. Pursuant to article 3, paragraph 1h of the Charter for the Kingdom of the Netherlands, extradition is a Kingdom affair. This means that Aruba and the Netherlands Antilles cannot regulate such matters independently. The existing legislation on extradition consists of an order in council for the Kingdom: the Netherlands/Antillean Extradition Decree (published - in Dutch - in the Publicatieblad van de Nederlandse Antillen, 1983:84). The extradition of war criminals is regulated, for the Netherlands Antilles and Aruba, by the War Crimes Extradition Decree for the Netherlands Antilles and Aruba (PB 1954, No. 115). This Decree is also an order in council for the Kingdom, and was therefore formally adopted by the Government of the Kingdom.

79. It is recommended that the Convention against Torture be added to the list of conventions given in article 1 of the War Crimes Extradition Decree for the Netherlands Antilles and Aruba as providing grounds for extradition. The Netherlands/Antillean Extradition Decree itself is in need of review.

While it is true that this Decree does not expressly stipulate that extradition must always be based on a convention, this may nevertheless be inferred from article 2, paragraph 3, of the Constitution for the Kingdom of the Netherlands. As the Netherlands/Antillean Extradition Decree does not elaborate on this requirement, this Decree does not - in contrast to the Dutch Extradition Act - enumerate the conventions that may serve as a basis for extradition.

International agreements

80. Following is a list of international agreements concerning extradition:

31-05-1889 The Netherlands-Belgium: Agreement between the Netherlands and Belgium for the mutual surrender of criminals (amended by treaty signed at The Hague on 25 October 1927 (Bulletin of Acts and Decrees 1928, 4). (Entered into force for Aruba on 14 February 1895.)

19-05-1894 Agreement with Portugal for the mutual surrender of criminals (Entered into force for Aruba on 19 November 1896.)

29-10-1894 The Netherlands-Spain: Agreement for the mutual surrender of criminals, both in the mother country and in the colonies. (Entered into force for Aruba on 1 May 1895.)

02-02-1895 The Netherlands-Liberia: Treaty between the Government of the Netherlands and the Government of Liberia to deliver up criminals. (Entered into force for Aruba on 30 October 1896.)

14-02-1895 The Netherlands-Belgium: Additional Agreement to extend the extradition treaty of 31 May 1889 to include the Dutch colonies. (Entered into force for Aruba on 5 June 1895.)

26-09-1898 Treaty between the United Kingdom of Great Britain and Ireland and the Kingdom of the Netherlands for the mutual surrender of fugitive criminals. (Entered into force for Aruba on 14 March 1899.)

16-12-1907 Extradition treaty with Mexico. (Entered into force for Aruba on 2 July 1909.)

25-10-1927 Treaty with Belgium to amend the Agreement for the mutual surrender of criminals concluded on 31 May 1889.

18-12-1956 Agreement between the Netherlands and Israel for the extradition of criminals. (Entered into force for Aruba on 18 January 1957.)

13-01-1957 European Convention on Extradition.

15-10-1975 First Additional Protocol to European Convention on Extradition. (Entered into force for Aruba on 21 July 1993.)

1.-03-1978	Second Additional Protocol to European Convention on Extradition. (Entered into force for Aruba on 15 September 1993.)
24-06-1980	Extradition Treaty between the Kingdom of the Netherlands and the United States of America. (Entered into force for Aruba on 15 September 1983.)
18-11-1980/ 28-05-1985	Exchange of Notes between the Government of the Kingdom of the Netherlands and the Government of the Commonwealth of the Bahamas, constituting an agreement on the application of the Treaty between the United Kingdom of Great Britain and Ireland and the Kingdom of the Netherlands for the mutual surrender of fugitive criminals, concluded in London on 26 September 1898.
05-09-1985	Treaty on Extradition between the Kingdom of the Netherlands and Australia. (Entered into force for Aruba on 1 February 1988.)
13-10-1989	Treaty between the Kingdom of the Netherlands and Canada on Extradition. (Entered into force for Aruba on 1 December 1991.)

Procedure in the event of extradition

81. The procedure to be followed in the case of extradition is laid down in the Netherlands/Antillean Extradition Decree, to which reference has already been made. The following provisions are taken from this Decree. Extradition takes place solely on the basis of a convention (whether bilateral or multilateral). An application for extradition is made through diplomatic channels. The Court of Justice decides what confiscated goods will be returned to the individual concerned in the event of extradition, and which will be handed over as evidence (art. 8). An alien may be held in detention under article 9 pending a request for extradition. If no such request has been received within two months of the date of the warrant of arrest, the person concerned is immediately released (art. 10). Upon receipt of a request for extradition, the person who has been detained is heard by the Court of Justice at the earliest opportunity (art. 13), after which, within the space of 14 days, the Court sends its recommendations and decision, together with the necessary documentary material, to the Governor (art. 15).

82. Extradition proceedings differ from criminal proceedings in what they set out to achieve. Whereas criminal proceedings have to determine whether the accused person is guilty as charged, extradition proceedings only have to decide on the admissibility of the extradition request. Where extradition is concerned, the question of whether the person accused is actually guilty of the offence in question, or whether, if applicable, he has rightfully been convicted, is therefore of little or no importance. For it is a fundamental principle of our extradition law that the States concerned place their confidence in the soundness of one another's legal systems.

83. This means that when a State requests the extradition of someone who is suspected of having committed a certain offence, and that person is within the territory of Aruba, the authorities competent to carry out this request will in principle proceed - provided that all the requirements of the convention have been met - to extradite the person concerned to the requesting State. If the person requested possesses Dutch nationality, extradition does not take place. The Netherlands/Antillean Decree on Extradition rules this out. It is in principle possible in such a case, however, for Aruba to take over the prosecution of its own nationals. Such prosecution takes place on the basis of the statutory regulations in the Code of Criminal Procedure, and according to the procedure already referred to under article 6 of the Convention. In a case of this kind, Aruba would gather together all the information from the requesting State that is needed to try the person concerned in Aruba, using the resources of mutual assistance.

Article 9 - Mutual assistance in criminal cases

84. Cooperation between sovereign States in the area of the dispensation of criminal justice, i.e. international legal assistance, may assume a variety of forms. It may take place on an ad hoc basis or it may be regulated in bilateral conventions. Several fundamental principles are adhered to when drafting conventions on international legal assistance. The Kingdom does not conclude conventions requesting cooperation for the enforcement and formulation of norms that conflict with its own principles of law or in which a response in the area of criminal law is deemed inappropriate. The question of trust plays a major role when conventions on international legal assistance are concluded: a State only enters into conventions of this kind with States in whose dispensation of justice it has confidence. Another important principle is that of reciprocity: a State is only willing to supply legal assistance to another State when it has reason to expect that the other State is willing to do the same, if placed in an equivalent position.

85. The following table lists the conventions in the area of international cooperation in criminal cases that are in force for Aruba.

Date	Title	Date of entry into force for Aruba
20-04-1959	European Convention on Mutual Assistance in Criminal Matters (ECMA)	1 January 1986
17-03-1978	Protocol to the ECMA	1 January 1986
12-06-1981	Convention between the Kingdom of the Netherlands and the United States concerning Mutual Assistance in Criminal Matters	15 September 1983
26-10-1988	Convention between the Kingdom of the Netherlands and Australia concerning Mutual Assistance in Criminal Matters	1 June 1991
01-05-1990	Convention between the Kingdom of the Netherlands and Canada concerning Mutual Assistance in Criminal Matters	1 May 1992

86. In practice, legal assistance is sometimes provided in the absence of any convention, and the transfer of proceedings is also possible. However, there have been no cases to date of legal assistance being requested in connection with prosecutions instituted concerning the offences referred to in article 4 of the Convention.

Article 10 - Training and information

General

87. Since gaining its autonomous status in 1986, Aruba has had to regulate all matters relating to the police and prison system independently. This has led to increased awareness of the need for persons arrested and/or detained to be treated in the proper way, in accordance with the provisions that safeguard human rights in the Aruban Constitution.

Aruban police force

88. Given that in practice it will often be the police force that is confronted with torture, or at any rate with complaints relating to it, human rights receive a great deal of attention during the training of police officers. Article 12 of the Country Ordinance on police training (AB 1986, No. 25) stipulates that after completing initial training the trainee should possess:

> "a. sufficient knowledge and understanding of the concept of law to be able to orient himself in the numerous prevailing legal standards"; [...]
>
> "d. sufficient knowledge and understanding of general police duties and the provisions concerning the lawfulness of action taken by the police, in particular in relation to the powers given to him as an investigating officer and the instructions concerning the use of violence;
>
> "e. sufficient knowledge and understanding of the concept of a 'criminal offence', the main general principles of substantive criminal law and the most relevant criminal offences; [...]
>
> "h. sufficient knowledge and understanding of human rights in general and the constitutional rights enshrined in the Aruban Constitution in particular, as well as the willingness to safeguard these rights."

89. The new Aruban Police Training Course (HAPO) was established in 1987. During this three-year basic course, the social elements of the job receive attention alongside conventional police knowledge and skills. The acceleration in social changes over the past few years make it imperative to reflect continually on the role that the police officer should play in society. What is needed is not so much a punitive as a preventive role. In order to encourage the police officer to adopt the right attitude and conduct, subjects with a social content have been incorporated into the curriculum, subjects which help trainees to understand human behaviour, teach them about developments in society, and promote self-knowledge.

90. The theme of human rights and police ethics is an integrated part of the practical course on police operations, and also comes up during the discussion of legislation. The course also includes a special week organized around the theme of the role of police officers in society. During this week, human rights and ethics also receive attention. Relevant groups within society and social institutions are often asked to contribute to the presentation of such themes. Furthermore, the Aruba branch of Amnesty International regularly organizes workshops and lectures at the police training institute.

91. The police force considers it important that the curriculum of the training course should be geared as closely as possible to the requirements of everyday police work. This calls for a continuous evaluation of the training course. It is also felt that awareness and understanding of human rights should exist at every level of the police force. With a view to achieving this, the police force plans to phase in changes in higher-level courses, which currently focus exclusively on the duties attaching to particular ranks. A course that focuses more clearly on the police officer's role will provide more of a guarantee for the satisfactory performance of the various duties involved. Furthermore, it is also important to deal with the changes taking place within society, and the police officer's role in that regard. That the police officer's role is seen as a highly responsible one is also expressed by the fact that fairly high standards are set during recruitment.

92. Guidelines for the treatment of persons arrested by the police are laid down in the Code of Criminal Procedure and further defined in police regulations. These guidelines indicate in some detail the procedures to be followed in relation to the arrest, questioning and the treatment of persons arrested (see also the comments on art. 11).

Aruba penitentiary (KIA)

93. The rules for prison staff are laid down in the Instructions for prison officers (PB 1958, No. 19). For some time, however, new legislation relating to the prison system has been under preparation.

94. The KIA's penitentiary system is based on modern principles relating to the humane treatment and care of the detainees. The aim is to create good relations between the prison staff and the detainees on the basis of mutual trust. It is hoped that with the cooperation of staff a shift of emphasis can be achieved towards social rehabilitation rather than the mere guarding of the detainees. However, the present circumstances in the institution are not ideal with a view to establishing the desired innovations. There is a shortage of staff, and the people currently doing the job do not in all cases possess the necessary expertise.

95. To improve the quality of care, the sick bay has since been expanded, and steps have been taken to establish a structured range of social and recreational activities, to set up a workshop and to provide a variety of vocational training courses. In addition, plans exist to establish a separate wing for detainees with behavioural disturbances (Forensic Observation and Counselling Department).

96. In general it may be said that despite the efforts being made by various bodies within Government (i.e. the Committee on Human Rights) and also outside it (e.g. Amnesty International) to stimulate the consciousness-raising process with regard to human rights in general, there is a need for specific training courses concerning the prohibition of ill-treatment/assault/torture both during the training of staff responsible for law enforcement and afterwards. In this connection it is also worth mentioning that no specific training course is as yet available to teach medical staff to recognize the signs of torture and the after-effects of psychological and physical abuse/torture. Within the judiciary too, a need is felt for instruction and training, in particular with regard to the recognition and evidence - including legal proof - of the psychological aspects of torture.

Articles 11 and 15 - Interview rules and procedures

General

97. It is a general rule of procedure that individuals must be treated with extreme care during and after arrest. Police officers are empowered to use force against persons and goods, although strict conditions are attached to such powers. The objective must be sufficient to justify the force, having regard in part to the dangers attached to the use of force, and it must be impossible to achieve this objective in any other way (art. 3, Country Ordinance on the police; AB 1988, No. 18), and if possible such action should be preceded by a warning concerning the use of force (art. 2). In a separate country ordinance (Country Ordinance on the use of force and security searches by the police; AB 1988, No. 60), this use of force is regulated in greater detail. If a police officer uses force in the exercise of his duties, he is obliged to hand in a special report on the incident within 24 hours. The public prosecutions department examines this report, and decides on the basis of it whether the officer in question has acted lawfully (see also the observations below on art. 12). Complaints about police action may also be submitted to the public prosecutor. When a suspect is brought before the public prosecutor, it is a standard part of procedure for him to be asked whether he has been treated properly up to that point.

98. The internal structure of authority, responsibilities and powers serve in general to guarantee that persons arrested will be treated properly. Furthermore, the behaviour of individual police officers comes up for regular discussion in performance interviews. Although a uniform complaints procedure is difficult to regulate, the Force is making a concerted effort internally to arrive at a clear and uniform policy on complaints procedures. For the procedure to be followed in investigating, and deciding whether to prosecute, police officers who have committed acts that are relevant to criminal law, and for complaints procedures, reference may be made to the observations in this report on article 12.

Rules for questioning

99. It has already been noted that the Code of Criminal Procedure contains explicit provisions relating to questioning procedures. For instance, a detainee may not be subjected to questioning at night, during the hours reserved for sleeping, unless he himself has no objection.

100. Furthermore, article 42 of the Code of Criminal Procedure provides that persons who have been detained in police custody shall not be subjected to any restrictions beyond what is essential to ensure incarceration in the interests of preserving order. In addition, the interrogating officer is obliged to point out to the detainee prior to questioning that he is not obliged to answer any questions and to caution him that anything he says may be used in evidence against him. Furthermore, the interrogating officer must refrain from doing or saying anything that amounts to procuring a statement that cannot be said to have been made freely. This includes ill-treatment, mental or physical coercion, making promises and so forth. Contravention of this regulation renders the examination invalid, and the trial judge cannot admit in evidence the official report that registers the results of such an interrogation. The court may proceed to designate these results as unlawfully obtained evidence; unless there is sufficient other evidence that has been obtained lawfully, the accused will then be acquitted.

Guarding and treatment of detainees

101. The police regulations contain provisions that must be observed in connection with the guarding and treatment of persons detained at police stations. These regulations relate to matters such as confinement, registration, checks, outdoor exercise, meals and medical care.

102. Where the treatment of detainees in Aruba's penitentiary is concerned, the relevant rules are to be found in the Prisons Ordinance and the Prisons Decree, which provide, inter alia, that prisoners shall only be confined to places designed for that purpose (prisons and remand centres; arts. 1-3 of the Prisons Ordinance), that prisoners are registered properly (arts. 21 and 22 of the Prisons Decree) and that prisoners may receive visitors (art. 47 of the Prisons Decree). For a detailed survey of the law on detention, reference should be made to part I of this report.

103. At present, the controls on association with detainees and the way the latter are treated are marginal in the extreme. Because prison officers do not operate in teams, they do not feel a sense of primary responsibility for ensuring that the institution runs as it should. This makes it hard for them to criticize one another for failing to function properly. Furthermore, the various sections do not have heads with specific supervisory duties. In the event of irregularities, the officer concerned is obliged to prepare a report under oath of office for the prison governors. This is followed by an internal investigation; if any misconduct is revealed, this is reported to the Minister of Justice.

104. At present there is no official right of complaint. The KIA does, however, on the basis of the Country Decree on the prison and remand centre Supervisory Committee (PB 1962, No. 160), have a Supervisory Committee that is responsible for ensuring the proper functioning of the institution. This Committee has access to the KIA at all times. Once a month, a representative of the Committee is present to hear detainees' complaints. These complaints are then discussed with the governors, after which a report is submitted to the Minister of Justice if necessary. Neither the governors nor the Committee is empowered to impose sanctions.

105. Disciplinary measures are decided upon in Cabinet and submitted for the Governor's approval. To date, complaints have rarely, if ever, concerned questions of ill-treatment. They generally relate to the way in which detainees are addressed by prison officers, whose lack of social skills is frequently the root cause.

Article 12 - Immediate and impartial investigation

106. If torture is suspected, the public prosecutions department institutes an investigation. The head of the public prosecutions department, the procurator-general, is empowered to issue to officials in charge of the police whatever instructions for the prevention and investigation of indictable or non-indictable offences he may deem necessary in the interests of the proper dispensation of justice.

107. When the conduct of police officers and special agents attached to the police force is investigated in the light of a suspected criminal offence, the National Criminal Investigation Division may be called in. The National Criminal Investigation Division was established by ministerial order of 23 February 1993. If the public prosecutor deems it necessary, he can request the procurator-general to set up a National Criminal Investigation Division inquiry. As a general criterion, the National Criminal Investigation Division is deployed in cases where it is necessary to rule out the slightest chance of the objectivity of the investigation being called into question. This objectivity is guaranteed by the fact that the National Criminal Investigation Division is further removed from the police officers and special agents attached to the police force than other investigating units. It is deployed in cases of the use of force which must be reported to the public prosecutions department pursuant to the Country Decree on the use of force and security searches. This is always the case when the force used has resulted in death or grievous bodily harm. An example is provided by the case of the public prosecutions department v. Lacle (see annex 3).

108. A police officer is empowered to use force against persons or goods during the lawful exercise of his duties, although strict conditions are attached to such use: the desired objective must justify the use of force, taking into account the dangers inherent in such use, and it must be impossible to achieve that objective by other means (art. 3, Country Ordinance on the police; AB 1988, No. 18); furthermore, the use of force must be preceded by a warning if possible (art. 2). In a separate Country Decree (Country Decree on the use of force and security searches by the police; AB 1988, No. 60) this use of force is subjected to additional regulations.

"Article 3.

"1. The police officer is empowered to use force in the exercise of his duties if and when:

"a. he cannot achieve his objective in any other way; and

"b. the importance of the desired objective justifies the use of force; and

"c. the dangers attached to the use of force, including those affecting third parties, are outweighed by the disadvantage of failure to achieve that objective."

109. Furthermore, the force used may not exceed the bounds of reasonableness and moderation, and the risks attaching to the use of force, for all concerned, including third parties, must be minimized as far as is possible (art. 4, paras. 1 and 2 of the same Country Decree). The use of firearms is regulated more specifically in articles 7 (on non-automatic weapons) and 9 (on automatic weapons).

110. Pursuant to article 11 of the Country Decree on the use of force and security searches, every police officer who has used force against persons in the exercise of his duties must immediately report this use of force, the reasons for it and the consequences ensuing from it to his superior or commanding officer, who is obliged to inform the chief constable of it without delay. The National Criminal Investigation Division is responsible for investigating the incident.

111. In relation to criminal investigations of the conduct of officers employed at Aruba's penitentiary, the same rules apply as to police officers and special agents attached to the police force. The use of force should be dealt with according to the same procedure, with the proviso that if the use of force has not caused grievous bodily harm or death, or if, in the case of the use of a firearm, no person has been shot, the investigation is in principle conducted by the Aruban Police Force. If a person who has been arrested or detained dies in any of the accommodation falling under the responsibility of the Aruban penitentiary, the investigation will be conducted by the National Criminal Investigation Division.

Article 13 - Victims' right of complaint

112. Pursuant to offence I.14 of the Constitution, everyone is entitled to submit a petition in writing to the competent authorities. A victim of ill-treatment/assault by a public servant can seek compensation in various ways.

113. Pursuant to article 2 of the Country Decree on complaints about police conduct (AB 1988, No. 71), anyone whose interests have been directly affected by the actions or words of a police officer during the latter's exercise of his duties may submit a complaint, furnished with reasons, to the Minister of Justice within 14 days. The Minister institutes an investigation of the complaint and decides on it within 45 days (art. 7), unless the Minister finds that the complaint shows that a criminal offence has been committed, in which case the Minister informs the public prosecutions department of the content of the complaint. In such cases, the investigation of the content of the complaint does not commence until the criminal investigation has been completed (art. 9 of the above-mentioned Country Decree). If the complainant disagrees with the Minister's decision, he may apply to the complaints committee on police action within 14 days (art. 12). Appointees to this

committee must be persons of unblemished character, who may be expected to have a mature understanding of the relations between the police and the public, and of the prevailing feelings about this issue in the Aruban community (art. 5, para. 1, of the aforementioned Country Decree).

114. Scope for a different complaints procedure is provided by article 26 of the Code of Criminal Procedure. When an interested party is of the opinion that there has been a failure to prosecute after a criminal offence has been committed, he may complain to a court of justice. If the court reaches the same conclusion as the complainant, it may instruct the relevant official at the public prosecutions department, after having received the official's report on this matter, to institute or order the institution of criminal proceedings, or to expedite existing criminal proceedings. No cases have been recorded, on Aruba, of complaints being made to a court of justice in relation to a prosecution for torture or ill-treatment/assault.

115. As noted above in relation to article 11, on the basis of the Country Decree on the prison and remand centre Supervisory Committee (PB 1962, No. 160), the KIA has a Supervisory Committee that is responsible for ensuring the proper functioning of the institution. This Committee has access to the KIA at all times. Once a month, a representative of the Committee is present to hear detainees' complaints. These complaints are then discussed with the prison governors, after which a report is submitted to the Minister of Justice if necessary. Neither the prison governors nor the Committee is empowered to impose sanctions. Disciplinary measures are decided on in Cabinet and submitted to the Governor of Aruba for approval.

Article 14 - Help to victims and compensation

116. A victim of ill-treatment by a government official may seek compensation along a variety of paths. If the official concerned belongs to the police force, a complaint may be submitted pursuant to the Country Decree on complaints against the police (see art. 13).

117. The official concerned may be prosecuted under criminal law since he has committed the offence of assault, which is defined as a criminal offence in the Criminal Code. Articles 187 ff. of Aruba's Code of Criminal Procedure offer the victim the opportunity to join the criminal proceedings. The maximum amount payable in compensation has, however, been set at Af. 1,500 (art. 187 of Aruba's Code of Criminal Procedure gives a sum of Af. 300; art. 12, para. 2 of the uniform Country Ordinance on the organization of the judiciary, AB 1993, No. GT 9, raised this sum to Af. 1,500). If the victim wishes to claim a higher amount in compensation, he is obliged to present his claim before a civil court. By invoking article 1382 or 1388 of Aruba's Civil Code (AB 1989, No. GT 100), he may hold either the official concerned or the State of Aruba (according to his own preference) accountable for the material and non-material damage suffered. Article 1382 lays down a general obligation to provide compensation for damage resulting from tort, and article 1388 specifically provides for injury or mutilation caused to any part of the body either intentionally or through carelessness.

118. The victim may be assisted by legal counsel. Article 2 of the Country Ordinance on legal aid (AB 1991, No. GT 45) provides for free legal assistance if the victim has an authentic place of residence in Aruba, and has an income from employment that is equal to, or less than, the statutory minimum wage. Article 2, paragraph 2, extends this by stipulating that aliens who are not resident in Aruba but who fulfil the requirements of this country ordinance are eligible for free legal assistance. Where a provision of international law so requires, aliens who are not resident in Aruba are also eligible for free legal assistance in civil cases. In this connection, Aruba is bound by article 6 of the European Convention on Human Rights.

Article 16 - Prevention of other cases of torture as committed by officials

119. Please see the observations made in this report in relation to articles 10, 11, 12 and 13.